

# EXHIBIT C

Fiona Scott Morton - January 23, 2024

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE WESTERN DISTRICT OF TEXAS  
4 AUSTIN DIVISION

Case No. 1:22-cv-01116-RP

5 -----x  
6 LUCID GROUP USA, INC.,  
7 Plaintiff,

8 - against -

9 MONIQUE JOHNSTON, in her official  
10 Capacity as Director of the Motor Vehicle  
11 Division of the Texas Department of Motor  
12 Vehicles, DANIEL AVITIA, in his official  
13 Capacity as Executive Director of the Texas  
14 Department of Motor Vehicles; and  
15 CORRIE THOMPSON, in her official  
16 Capacity as Director of the Enforcement  
17 Division of the Texas Department of Motor  
18 Vehicles,

19 Defendants.

20 TEXAS AUTOMOBILE DEALERS  
21 ASSOCIATION,

22 Intervenor-Defendant.  
23 -----x

24 January 23, 2024  
25 10:07 a.m.

Deposition of FIONA SCOTT MORTON,  
Ph.D., taken by Intervenor-Defendant,  
pursuant to Notice, held at the offices of  
BakerHostetler, 45 Rockefeller Plaza, New  
York, New York, before Todd DeSimone, a  
Registered Professional Reporter and Notary  
Public of the State of New York.

Fiona Scott Morton - January 23, 2024

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Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 MR. HASTINGS: Sure. I know  
3 Don House, who is one of the experts on  
4 this case, is on the line. I don't  
5 know if she is on yet or not, but Karen  
6 Phillips with the Texas Automobile  
7 Dealers Association may be joining us  
8 for all or part of this deposition.

9 MR. STONE: And on our end, we  
10 currently have Zachary Rhines on the  
11 line and we may be joined by Terry  
12 Vannoy from the DMV listening in.

13 THE VIDEOGRAPHER: Thank you.  
14 Would the court reporter please swear  
15 in the witness and then counsel may  
16 proceed.

17 \* \* \*

18 F I O N A S C O T T M O R T O N ,  
19 Ph.D.,  
20 called as a witness, having been first  
21 duly sworn, was examined and testified  
22 as follows:

23 EXAMINATION BY MR. HASTINGS:

24 Q. Professor Morton, could you  
25 please just state your full name for the

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 record.

3 A. Fiona Margaret Scott Morton.

4 Q. And where do you live?

5 A. New Haven, Connecticut.

6 Q. Have you ever lived in Texas?

7 A. No.

8 (Exhibit 1 marked for  
9 identification.)

10 (Exhibit 2 marked for  
11 identification.)

12 (Exhibit 3 marked for  
13 identification.)

14 (Exhibit 4 marked for  
15 identification.)

16 Q. Dr. Morton, I have put several  
17 documents in front of you, a copy of the  
18 deposition notice, the declaration you  
19 filed in this case, or that Lucid filed in  
20 this case that is your declaration, your  
21 expert report, and your rebuttal expert  
22 report. So I wanted you to know that those  
23 are Exhibits 1 through 4 that are in front  
24 of you. Feel free to look at them at any  
25 point during the day of course if you need

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 Q. Professor Morton, am I correct  
3 in understanding that you provided some  
4 expert testimony for Lucid in Virginia?

5 A. Yes, I worked with Lucid in  
6 Virginia. I don't recall exactly what the  
7 format was there.

8 Q. Could you tell us, what was the  
9 nature of the issues you were addressing  
10 for Lucid?

11 A. Oh, the same ones that are here  
12 in the sense of is it -- is there any  
13 reason to stop the manufacturer that wants  
14 to sell through a store from operating in a  
15 particular state when it comes to  
16 competition and the welfare of the people.

17 Q. And did the State of Virginia,  
18 and I don't know the ins and outs of  
19 Virginia as to which department they call  
20 it, but did the State of Virginia oppose  
21 Lucid's request?

22 A. I don't recollect whether it  
23 was the State or the dealerships or who  
24 exactly, I'm sorry.

25 Q. Do you know if there were any

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 economists or expert witnesses presented on  
3 behalf of the other side of that dispute?

4 A. I don't recall.

5 Q. So you would not recall who  
6 they were?

7 A. No. I don't know if there were  
8 any, so definitely not who they were.

9 Q. And am I correct in  
10 understanding that you also provided expert  
11 witness work for Rivian in Virginia?

12 A. Yes.

13 Q. Could you tell us the nature of  
14 the work that you did for Rivian related to  
15 Virginia proceedings?

16 A. Again, it's the same issue,  
17 whether there is any issue for a state to  
18 be concerned with a vertically-integrated  
19 manufacturer selling its own automobiles  
20 and the impact on competition.

21 Q. And was Rivian's request  
22 opposed by either the State or the dealers?

23 A. I don't recall.

24 Q. Do you recall if any experts or  
25 economists were presented by the other side

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 of that dispute in that proceeding?

3 A. I don't recall.

4 Q. Let's go to C. Well, let me  
5 start more generally. I understand that  
6 you have also done significant work for  
7 Tesla; is that right?

8 MR. LEVINE: I object to the  
9 form. But you can answer.

10 A. I have answered this or spoken  
11 about this same issue on behalf of Tesla in  
12 a few states. I see here, just refreshing  
13 my recollection, it looks like it is  
14 Arizona, Virginia, North Carolina, Utah and  
15 Georgia.

16 Q. Are you aware of any other  
17 states that you provided testimony on  
18 behalf of Tesla on this issue?

19 A. If you took this from my CV, I  
20 don't recall from memory all the states,  
21 but they are written in my list of  
22 testimony, so if this is an accurate  
23 reflection of that, then that would be  
24 complete.

25 Q. Fair enough. And I'm not

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 reports published by SIGTARP?

3 A. No.

4 Q. And so you would not have  
5 reviewed any reports SIGTARP published  
6 related to the reduction of the number of  
7 dealerships related to the Chrysler and GM  
8 bailouts?

9 A. Correct.

10 Q. Okay. So who is Francine  
11 Lafontaine?

12 A. She is a professor of economics  
13 at the University of Michigan.

14 Q. And am I correct in  
15 understanding that you have written several  
16 articles or quite a few articles and done  
17 research with her on many occasions?

18 A. I think "many" would be too  
19 strong. We have certainly done a couple of  
20 projects together and I have known her for  
21 several decades, we're friends.

22 Q. Are the opinions that you are  
23 offering in this case on behalf of Lucid  
24 related to the Texas restrictions on the  
25 manufacturer selling direct to a consumer,

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 are your opinions specific to an EV  
3 manufacturer or do they apply to any new  
4 manufacturer trying to enter the market?

5 A. They apply to any manufacturer  
6 that wants to enter the market who doesn't  
7 have existing franchise dealers.

8 Q. So as I understand your  
9 testimony, your study in this area began  
10 when you were working on your paper in 2010  
11 with Professor Lafontaine?

12 A. That's correct, although the  
13 way economics works, I'm afraid to say we  
14 have to work on the paper before it gets  
15 published.

16 Q. Yes.

17 A. I don't recall exactly when we  
18 started, but probably the end of 2008 or,  
19 anyway, 2009 let's say.

20 Q. And sometimes it takes a really  
21 long time to get through that process,  
22 doesn't it?

23 A. This one was quick because it  
24 is the Journal of Economic Perspectives,  
25 but you are well informed, yes, normally it

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. Yes. That was quite a small  
3 project. I did not visit a Rivian  
4 showroom.

5 Q. Have you ever visited a Lucid  
6 showroom?

7 A. No, I have not.

8 Q. Have you ever driven a Lucid  
9 vehicle?

10 A. No.

11 Q. Have you ever driven a Rivian  
12 vehicle?

13 A. No.

14 Q. You have driven a Tesla?

15 A. I have.

16 Q. What kind of car do you drive?

17 A. I have a Tesla and a VW.

18 Q. Have you experienced any  
19 problems with your Tesla?

20 A. One time the cap on the  
21 electric charging place on the car popped  
22 up and wouldn't close.

23 Q. You had to get it repaired?

24 A. Tesla came to my driveway,  
25 repaired it while I was at work, went away

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 to assess whether it would enhance  
3 competition to allow that strategy, along  
4 with every other one, to compete for  
5 consumers in Texas.

6 Q. So then is it fair to say that  
7 you have done no analysis of, you know,  
8 Lucid's pricing or Lucid's cost or its  
9 profits?

10 A. That's right. I have read the  
11 documents that we mentioned before, the  
12 10-K, the 10-Q, the earnings. I have an  
13 understanding of the strategy that they are  
14 putting forward and the reasons why they  
15 think it is best. But I have not done  
16 independent analysis of anything like  
17 optimal price or expected profit or  
18 anything like that.

19 Q. Do you know, and I'm not asking  
20 for a specific dollar number, just kind of  
21 in general, do you know how much Charles  
22 River & Associates has been paid for your  
23 work as an expert in the EV industry  
24 related to these direct sales issues?

25 A. No, I don't.

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 Q. Are you familiar with Fisker?

3 A. I have heard of them.

4 Q. What do you know about Fisker?

5 A. It is a startup car company,  
6 and I don't know anything else actually.

7 Q. What about VinFast?

8 A. I'm not familiar with that  
9 name.

10 Q. So you have never worked for  
11 either Fisker or VinFast?

12 A. Correct.

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. That's correct.

3 Q. And you were there for it looks  
4 like a year or two?

5 A. That's correct.

6 Q. But you were not there as a  
7 lawyer, were you?

8 A. That's correct.

9 Q. You do not hold a legal degree,  
10 do you?

11 A. That's correct.

12 Q. And you're not an expert on  
13 constitutional law, are you?

14 A. Correct.

15 Q. Other than this matter, have  
16 you ever been providing testimony in a case  
17 raising constitutional challenge to a state  
18 statute?

19 A. Well, as we've just discussed,  
20 I am not a legal expert, so I would  
21 prefer -- well, not I would prefer -- I am  
22 not qualified to answer that question. I  
23 don't know if the matters that I've worked  
24 on have had constitutional issues.

25 Q. Fair enough. There is an

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 Q. Do you believe it is  
3 appropriate for economists to consider  
4 historical events?

5 A. Sometimes those are  
6 illuminating for the matter at hand. It  
7 depends, of course, on what exact issue you  
8 are trying to illuminate.

9 Q. So in the abstract it is  
10 perfectly fine to consider historical  
11 events, you may decide they are not  
12 relevant to a specific circumstance, but  
13 considering historical events is certainly  
14 appropriate?

15 A. I would not rule out  
16 considering historical events. It is  
17 possible that considering a particular  
18 historical event in a particular context is  
19 inappropriate. That's also true.

20 Q. Are you testifying in this case  
21 that there is no room for disagreement of  
22 opinion on whether manufacturers should be  
23 allowed to sell direct to consumers?

24 A. A manufacturer that does not  
25 already have franchise dealers in a state,

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 you believe it should be allowed to sell  
3 direct, right?

4 A. That's correct.

5 Q. What happens if,  
6 hypothetically, if that's allowed, okay,  
7 let's say the courts agree or the State  
8 changes its mind and agrees with you, and  
9 that's allowed that this new manufacturer  
10 can sell direct to consumers in Texas, so  
11 that's our hypothetical scenario, what  
12 happens if the manufacturer changes its  
13 mind and decides after it starts selling  
14 direct to the consumers that it wants to  
15 have dealers?

16 A. Then it would set up some  
17 dealers.

18 Q. But then wouldn't that raise  
19 the problem of the manufacturer potentially  
20 competing against its own dealerships?

21 A. Oh, sorry, I thought you meant  
22 the manufacturer changes formats completely  
23 and stops having stores and has  
24 dealerships.

25 Q. No. I'm saying if the

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 manufacturer starts selling direct to the  
3 consumers and then decides, you know, it  
4 would be great to have some dealers to help  
5 me reach other parts of the state, for  
6 example, what would happen?

7 A. I don't know.

8 Q. Have you ever considered that?

9 A. I think there would be a  
10 response on the part of regulators. I  
11 don't know what that would be.

12 Q. Have you done the analysis or  
13 considered what happens in that  
14 circumstance?

15 A. No.

16 Q. So in forming your opinions do  
17 you have an opinion one way or the other of  
18 whether when Lucid, you know, a  
19 manufacturer with no dealerships, enters  
20 the industry whether it also would have to  
21 commit that it was never going to use  
22 dealers, do you have an opinion one way or  
23 the other on whether it would have to make  
24 such a commitment?

25 A. I have not -- so that's not in

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 my report. It's not something I've  
3 considered until now. No, I don't have an  
4 opinion yet. I would have to think about  
5 it.

6 Q. Professor Morton, I will throw  
7 out a guess, you are familiar with Elon  
8 Musk, right?

9 A. I have heard of him, yes.

10 Q. Have you ever met him?

11 A. No.

12 Q. Have you ever heard Mr. Musk  
13 testify that, as the CEO of Tesla, that he  
14 would consider using dealerships in the  
15 future?

16 A. I may have heard that at some  
17 point, but I don't -- I didn't hear it  
18 live. I may have read a secondhand report  
19 or something like that.

20 Q. And, I mean, you're not  
21 disagreeing that he said that?

22 A. I don't have independent  
23 verification of it, but I'm not  
24 disagreeing, no.

25 Q. And I don't have the exact

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.  
2 words in front of me either. Do you have  
3 an opinion one way or the other of whether,  
4 from an economic perspective, that is  
5 reasonable for a manufacturer to kind of go  
6 on its own for a while, build its brand,  
7 but then eventually switch over and use  
8 dealerships, is that a reasonable  
9 consideration?

10 A. What do you mean, a reasonable  
11 consideration?

12 Q. Is that, from an economic  
13 perspective, is that a reasonable thing for  
14 a business to consider?

15 A. So I don't know how to process  
16 that question. We don't -- economics  
17 doesn't tell you about whether something is  
18 reasonable or not. I can answer a question  
19 about if the firm is profit-maximizing and  
20 trying to minimize cost and maximize  
21 revenue, what kind of distribution channels  
22 it's going to pick. But I don't know  
23 how -- I can't answer this question. It  
24 doesn't make sense.

25 Q. When forming your opinions in

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 this case, did you take into consideration  
3 the possibility that the manufacturer who  
4 is looking to sell direct to the consumers  
5 might switch over and want to start using  
6 dealers too, did you consider that?

7 A. No, I did not.

8 Q. And I want to make sure that I  
9 have this right. Your testimony, you're  
10 not planning to offer testimony that  
11 someone was -- someone's opinions are  
12 irrational, I mean, obviously that's a  
13 different word than wrong, okay, in this  
14 case are you planning to offer any  
15 testimony that someone's opinions are  
16 irrational?

17 MR. LEVINE: I object to the  
18 form.

19 A. I don't know what you're going  
20 to show me on the stand, so I think it is a  
21 bit difficult to commit in an environment  
22 where I have no idea what I'm going to be  
23 asked.

24 But if you are talking about  
25 Dr. House and Mr. Stockton, again, I'm

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. I do not. I mean, maybe I was  
3 told at the time, I have forgotten.

4 Q. And so if I went down each one  
5 and asked you, you know, do you know  
6 whether the state either -- whether the  
7 ultimate resolution was either in favor of  
8 the EV manufacturer or the state for each  
9 of those proceedings, you would not recall  
10 today?

11 A. That's correct.

12 Q. Thank you. You just saved us a  
13 lot of time.

14 MR. LEVINE: We're done with  
15 the deposition?

16 MR. HASTINGS: Not quite.

17 THE WITNESS: Before lunch  
18 would be a record. Go ahead.

19 Q. Have you ever testified before  
20 the Texas legislature?

21 A. No.

22 Q. So the opinions that you are  
23 offering in this case are opinions that you  
24 have not personally presented to the Texas  
25 legislature, right?

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. I have never testified before  
3 the Texas legislature.

4 Q. Are you aware of anyone, you  
5 know, any of your clients, any of the  
6 lawyers you have worked with, are you aware  
7 of anyone presenting your opinions on  
8 EVs -- manufacturers selling direct to  
9 consumers, are you aware of any of those  
10 parties presenting those opinions to the  
11 Texas legislature?

12 A. I don't know if they did.

13 Q. Are you aware of any states  
14 other than Texas that currently prohibit  
15 manufacturers from selling automobiles and  
16 motor vehicles direct to consumers?

17 A. I know generally that those  
18 states exist, but I don't know which ones,  
19 other than Texas of course.

20 Q. And do you know which states  
21 allow manufacturers to sell direct to  
22 consumers?

23 A. I know that California does,  
24 that's where Tesla began. I don't recall  
25 which others.

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. No.

3 Q. Do you know who Maryanne Keller  
4 is?

5 A. That name sounds familiar, but  
6 I can't remember who that is exactly.

7 Q. Do you know who Patrick  
8 Anderson is?

9 A. No.

10 Q. Now, this lawsuit that Lucid  
11 has filed is governed by a rational basis  
12 standard, and I know you're not a lawyer so  
13 I'm not asking you to testify about what  
14 the law is and how it's being interpreted,  
15 just to be clear. Are you familiar with  
16 the rational basis standard?

17 A. I'm an economist. I have read  
18 about it, that's the extent of my  
19 knowledge.

20 Q. Are you intending to opine  
21 whether the rational basis standard has  
22 been met or satisfied by Lucid in this  
23 case?

24 A. To the extent that's a legal  
25 conclusion, then I will not be drawing any

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 legal conclusions. To the extent that  
3 it -- that one of the elements a person  
4 could care about would be whether there is  
5 an economic argument for blocking a certain  
6 kind of distribution method or that there  
7 is an economic argument in favor of  
8 competition in a state, then those could be  
9 elements of somebody arguing a rational  
10 basis, but I will not be drawing any legal  
11 conclusions.

12 Q. And it's my understanding that  
13 you are familiar with the Fifth Circuit's  
14 decision in the Ford versus the Texas  
15 Department of Transportation case, right?

16 A. Yes, a little bit, that's  
17 right.

18 Q. I mean, I've seen you cite it  
19 and discuss it in some articles that you  
20 have written, or at least one article that  
21 you have written. So you have read the  
22 decision?

23 A. Well, I must have done, but it  
24 would be some years ago, not recently.

25 Q. Do you know if -- let me first

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 that is aligning my profit with what the  
3 consumer wants.

4 Q. If you saw evidence of EV  
5 manufacturers focused on increasing its  
6 profits and selling more vehicles at the  
7 expense of taking care of and repairing  
8 vehicles for the people they have already  
9 sold to, would that be a relevant  
10 consideration for purposes of your opinions  
11 of whether it is appropriate to have  
12 restrictions on manufacturers selling  
13 direct to consumers?

14 MR. LEVINE: I object to the  
15 form.

16 A. I don't think it's relevant to  
17 whether manufacturers should be allowed to  
18 sell direct to consumers.

19 Q. Why is it not relevant?

20 A. Because that issue arises in  
21 any form of distribution channel.

22 Q. What do you mean by any -- what  
23 do you mean it arises in any form of  
24 distribution channel?

25 A. Whether I have franchise

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 dealers or have a different manufacturer  
3 that have stores, they both have a problem  
4 of trying to balance dedicating resources  
5 to how much do I invest in, I don't know,  
6 the old consumers versus new consumers.

7 Q. Have you done any analysis of  
8 Lucid to determine how it is balancing its  
9 investments in selling vehicles and raising  
10 a profit from new consumers versus having a  
11 sufficient support infrastructure to take  
12 care of its existing customers?

13 A. No, because every manufacturer  
14 varies on that front, and it has no  
15 relationship to whether there is a reason  
16 to block having this distribution channel.

17 Q. Have you done an analysis of  
18 that issue for any EV manufacturers about  
19 how it is balancing their profit motives  
20 versus having the infrastructure to take  
21 care of their existing customers?

22 A. No, again, because managerial  
23 talent and how the strategy of the firm is  
24 chosen is not relevant to whether there's a  
25 good reason to block a certain distribution

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 trying to imply.

3 Q. I think you are reading  
4 something into my question that was not  
5 there. I wasn't implying anything. I was  
6 asking you the question of are you aware  
7 that traditional dealerships earn a  
8 relatively small percentage of their  
9 profits compared to their overall profits?

10 A. That relatively small  
11 percentage of profits represents real  
12 dollars for the consumers buying new cars,  
13 usually thousands of dollars per car,  
14 definitely hundreds of dollars per car,  
15 which is not relatively small to those  
16 consumers.

17 Q. What do you understand are the  
18 sources of revenues for traditional  
19 dealerships?

20 A. Generally I understand that to  
21 be new car sales, used car sales, markups  
22 on financing and insurance and extra spray  
23 coatings and repair work.

24 Q. And so when you are talking  
25 about there being in the hypothetical Lucid

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 idea.

3 MR. HASTINGS: Objection,  
4 nonresponsive.

5 MR. STONE: Objection,  
6 nonresponsive.

7 Q. So are you aware of any reason  
8 why Lucid, either directly or through an  
9 independent dealer, could not resell used  
10 vehicles that were traded in as people  
11 bought their new Lucid automobile?

12 A. Could Lucid find a way to do  
13 that at their stores? Probably, if they  
14 wanted to.

15 Q. And are you aware of any reason  
16 why if there was an independent dealer  
17 selling Lucids that they couldn't also  
18 resell the cars that were traded in to  
19 generate revenues?

20 A. They could have if they wanted  
21 to. It is just an asset. Anybody can buy  
22 and sell a used car.

23 Q. And when you opine that an  
24 independent Lucid dealership would not --  
25 would not be economically viable, you have

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 role for them, and they should go work for  
3 a manufacturer that uses a franchise dealer  
4 model where they can make all the kinds of  
5 money you are talking about.

6 MR. HASTINGS: Objection,  
7 nonresponsive.

8 MR. STONE: Objection,  
9 nonresponsive.

10 Q. My question is when you formed  
11 your opinions that a hypothetical  
12 independent Lucid dealer would not be  
13 economically viable, you did not factor in  
14 the possibility that they could be earning  
15 revenues on the trade-in of vehicles, not  
16 that they had to earn and deal with  
17 trade-ins, but they could earn revenues off  
18 of the trade-ins, that didn't factor into  
19 your analysis, did it?

20 A. So I didn't do a quantitative  
21 analysis, that is Herb Walter's job, but it  
22 does factor into my analysis because  
23 there's no reason for the consumer to be  
24 buying at that dealership. They are going  
25 to buy online, which is more convenient,

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.  
2 doesn't involve hassle, lets them buy the  
3 car, lets it get delivered to their house.  
4 So why would they be going to that place to  
5 turn in their used car as opposed to  
6 shopping around and turning in their used  
7 car anywhere they want? It is not -- there  
8 is no reason to do that. There is no  
9 valuable economic activity that that entity  
10 is providing, because there is lots of  
11 places you can trade in your used car, or,  
12 sorry, sell your used car, because you  
13 wouldn't be trading it for anything, you  
14 would just be getting money for it, and you  
15 would be buying your Lucid on the web at  
16 the fixed price in a relaxed, hassle-free,  
17 pressure-free environment.

18 Q. So your understanding is that  
19 the majority of Lucid sales would be over  
20 the internet without someone physically  
21 coming to a location?

22 A. Often, my understanding is that  
23 often the way these sales work is that  
24 people visit and test drive and have  
25 questions repeatedly and might go to a

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 reason to force a new car manufacturer to  
3 do it.

4 Q. And are you saying that you  
5 believe there is no role for the  
6 legislature and the government to be  
7 involved in regulating the need to have the  
8 ability for trade-ins through dealerships  
9 and from the manufacturer too?

10 A. I don't see a market failure  
11 there, I see a perfectly functioning market  
12 in used cars. I don't see why you would --  
13 the legislature would say to a supermarket  
14 you must offer three sizes of organic  
15 mangos. You let the supermarket decide  
16 what they are going to offer and if  
17 consumers don't like the range at that  
18 supermarket they go to a different one. It  
19 is a bit the same here.

20 Q. So you think that the  
21 automobile industry is like the supermarket  
22 situation?

23 A. I think that markets, I believe  
24 in capitalism and markets and free markets  
25 and choices of businesses to run their

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 business the way they want and the ability  
3 of consumers to leave that business if they  
4 don't like those choices.

5 Q. Is the automobile market  
6 comparable to the supermarket market?

7 A. In the sense that people are  
8 spending their own money and choosing  
9 between either varieties of cars or  
10 varieties of food and service and  
11 locations, they display that same economic  
12 force that is present when there is  
13 competition and choice.

14 I have different foods within  
15 the supermarket, different supermarkets, I  
16 have different cars within the dealership,  
17 I have different dealerships, and we want  
18 the consumers to take full advantage of  
19 that choice and vibrant competition and to  
20 be free to take their business elsewhere if  
21 they don't like what that particular outlet  
22 is offering.

23 Q. The traditional dealerships,  
24 one of their sources of revenues is vehicle  
25 repairs and service. You're aware of that,

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 right?

3 A. Yes.

4 Q. Wouldn't that source of revenue  
5 be available to a hypothetical Lucid  
6 independent dealer?

7 A. I think that it would be, but  
8 let's keep in mind that electric cars just  
9 don't have as many moving parts, they don't  
10 need to be repaired and serviced in nearly  
11 the same frequency. You can do the wiper  
12 blades yourself. So at least my  
13 understanding of the available revenue from  
14 repairs, it would be far, far less.

15 Q. Have you done any studies or  
16 analysis of the amount of repairs and  
17 services that EVs need as compared to  
18 traditional internal combustion engine  
19 vehicles?

20 A. Not my own studies, no.

21 Q. And in coming to the conclusion  
22 that an EV would require less service and  
23 repairs, what are you relying upon?

24 A. General knowledge from the  
25 market and also of course my own knowledge

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 on the subject.

3 MR. STONE: You are the one  
4 that proffered her.

5 MR. LEVINE: You can read her  
6 report and you can see what she is  
7 proffered on.

8 MR. HASTINGS: That's a fair  
9 point there.

10 Q. So, Dr. Morton, you have never  
11 worked as a mechanic, have you?

12 A. That's correct.

13 Q. You're not an expert in  
14 automobile repairs and service, are you?

15 A. That's correct.

16 Q. And the reason I'm talking to  
17 you about repairs is because repairs is a  
18 traditional source of revenue for  
19 traditional dealerships, that's why I'm  
20 talking to you about it.

21 So my question is why wouldn't  
22 repairs be a source of revenue for a Lucid  
23 dealership, if there was one?

24 A. Because they would be a lot  
25 smaller.

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 responsive.

3 MR. STONE: It was not. The  
4 question was about the legislature.

5 MR. LEVINE: She answered what  
6 she thought was an important  
7 consideration.

8 Q. So your opinion is that a Lucid  
9 dealership would not be economically  
10 viable, but you've done no quantification  
11 of how much revenues or how much profits a  
12 Lucid dealership could earn, have you?

13 A. Well, I have, in the sense that  
14 if the car is available at a certain price  
15 on the web, and that's the fixed price, a  
16 dealership, an independent dealership in  
17 the world you're imagining that buys at  
18 that price and sells at that price earns  
19 zero. So that's a very simple math  
20 problem. It earns zero.

21 And if there are over-the-air  
22 updates and Lucid successfully produces a  
23 car with a good -- with a good reliability  
24 track record, then that means that the  
25 amount in repairs would be less, and

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.  
2 perhaps substantially less, and therefore  
3 we're talking about -- and the sales model  
4 that Lucid would prefer to use is a  
5 no-pressure, education-friendly sales  
6 model, which dealerships do not offer.

7 So when you start putting it  
8 all together you see that there is just  
9 qualitatively a lot less reason to have a  
10 dealership, and that's why, of course Lucid  
11 has decided to have stores.

12 Q. So in doing the analysis of the  
13 economic viability, you focused of course,  
14 as you said, on the internet sales and  
15 uniform pricing, but you're not taking into  
16 account the possibility of generating  
17 revenues from selling used vehicles that  
18 are traded in or the possibility of earning  
19 revenues from repairs of the vehicles?

20 MR. LEVINE: It is misquoting  
21 what's in her expert report.

22 A. I also mentioned in the  
23 previous answer that repairs would be  
24 substantially smaller. I also mentioned  
25 that the sales process that dealerships use

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 the unsafe cars and so forth, yes.

3 Q. And the State has a role in  
4 regulating the relationship between  
5 manufacturers and dealers, right?

6 A. I actually think that those  
7 usually could be handled perfectly  
8 ordinarily by normal contract law and other  
9 laws. I'm not sure that we need very much  
10 regulation of that.

11 As previously mentioned, the  
12 special case of whether a manufacturer can  
13 compete with its own dealers is tricky,  
14 that could be improved possibly with some  
15 regulation, but I have not studied that  
16 issue, so I don't really know yet from my  
17 own opinion what the best way to regulate  
18 that would be.

19 Q. I want to go back to the  
20 economic viability of a Lucid dealership,  
21 and one of the things we talked about was  
22 repairs, and if I heard you correctly, your  
23 testimony is that if Lucid makes a good  
24 vehicle and does what it hopes it can do,  
25 which is create a vehicle that needs less

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 or do not think it is a good idea to have  
3 franchise dealers or anything.

4 One of the things you did say  
5 is that if a vehicle is more reliable, that  
6 there would be less opportunity for repair  
7 revenues, and I think we're in agreement on  
8 that, that if a vehicle is more reliable  
9 and less parts and needs less repairs,  
10 there is less opportunity for repair  
11 revenue. And my only question for you is  
12 if that assumption proves wrong, that the  
13 vehicle is not more reliable, there  
14 actually is a greater opportunity for  
15 repairs, yes or no?

16 A. Certainly directionally that's  
17 correct.

18 Q. Okay, thank you. Does the  
19 volume of car sales for Lucid, does that  
20 impact your opinion?

21 A. Yes, it does.

22 Q. Can you explain that for me?  
23 How does volume and the volume that Lucid  
24 is selling impact your opinions?

25 A. Any hypothetical sale -- any

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 sales by the hypothetical Lucid dealer  
3 would be very minimal and would have to  
4 cover significant fixed cost.

5 Q. Are you aware of the fact that  
6 there are a lot of automobile manufacturers  
7 that sell relatively small numbers of cars?

8 A. Yes.

9 Q. Particularly in the luxury  
10 environment, luxury vehicle market, right?

11 A. I don't know that, about that.

12 Q. I mean, for example,  
13 Lamborghini has become pretty popular, a  
14 lot of people -- well, not a lot of  
15 people -- some people buy Lamborghinis,  
16 they don't sell very many cars, but they  
17 manage to sell through dealerships, right?

18 MR. LEVINE: Objection. "Some  
19 people," probably still too broad.

20 A. I don't know anything about  
21 Lamborghini.

22 Q. Right. But there are makes of  
23 cars where they have been successfully sold  
24 through the dealership model even though  
25 the volume of cars is relatively low, the

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 Q. And some of them are doing it  
3 successfully, aren't they?

4 A. I don't know.

5 Q. I'm sorry, I'm jumping around a  
6 little bit, but I was asking you about  
7 capacity. Do you have an understanding as  
8 to what Lucid's capacity is for  
9 manufacturing vehicles?

10 A. I think I have a statistic in  
11 the report somewhere about what they are  
12 building to produce, but I don't have it  
13 memorized. Oh, here we go, 90,000 vehicles  
14 per year in 2024 is what I have.

15 Q. And do you know how many  
16 vehicles Lucid sold last year?

17 A. No, I don't.

18 Q. It is significantly less than  
19 90,000, isn't it?

20 A. I don't know.

21 Q. Do you know how many vehicles  
22 Lucid is planning to sell overseas?

23 A. No, I don't.

24 Q. Do you know how much of Lucid's  
25 capacity that it is building in the United

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 States that it intends to sell in other  
3 countries?

4 A. No, I don't.

5 Q. If you have got your report in  
6 front of you, and I believe this is in  
7 paragraph 13, there is a statement that  
8 says "The 4.6 miles per" it looks like "per  
9 kilowatt hour efficiency of the Lucid Air  
10 Grand Touring Sedan is unprecedented,  
11 reducing both its manufacturing cost and  
12 total ownership costs for its customers."

13 Do you see that language?

14 A. I do.

15 Q. And that's your language,  
16 right?

17 A. Yes.

18 Q. One thing I was trying to  
19 understand is how does this 4.6 miles per  
20 kilowatt hour efficiency impact  
21 manufacturing costs?

22 A. Well, that's a scientific  
23 question that I don't know the answer to.

24 Q. Okay. So where did you get the  
25 statement then?

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. Well, the footnote is to the  
3 earnings release from 2022.

4 Q. Okay. So you don't have any  
5 personal knowledge about whether that is  
6 true, whether that impacts --

7 A. I can't evaluate it as an  
8 engineering matter. I have no ability to  
9 evaluate that.

10 Q. Right. So you don't have a  
11 basis to offer an opinion that this 4.6  
12 miles per kilowatt hour of efficiency  
13 reduces manufacturing costs, that's not  
14 something you are capable and prepared to  
15 do, are you?

16 A. I can point to where Lucid says  
17 it. I cannot independently verify it with  
18 my skill set.

19 Q. And we have talked a lot about  
20 repairs. You would agree, though, that EVs  
21 do not eliminate all types of service and  
22 repairs that need to happen for vehicles,  
23 right?

24 A. That's correct.

25 Q. I mean, they still need tires,

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. Well, that's the sense in which  
3 we care about reputable, that it's being  
4 unbiased and not serving the interests of  
5 the manufacturer, and if we're going to  
6 evaluate cars, that's the sense of  
7 reputable that we care about.

8 Q. Do you believe that Consumer  
9 Reports is a reputable source for  
10 evaluating the reliability of products?

11 A. I think so, in general.

12 Q. And have you reviewed Consumer  
13 Reports related to electric vehicles?

14 A. I don't recall doing that. But  
15 I don't know, I can't remember everything  
16 that's in my materials.

17 Q. Dr. Morton, can you explain  
18 what the concept of double-marginalization  
19 is?

20 MR. LEVINE: Before we jump to  
21 that topic, can we take a short break?

22 MR. HASTINGS: Sure.

23 MR. LEVINE: Thanks.

24 THE VIDEOGRAPHER: Off the  
25 record at 14:12, marking the end of

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 media unit number three.

3 (Recess taken.)

4 THE VIDEOGRAPHER: On the  
5 record at 14:23, marking the beginning  
6 of media unit number four.

7 BY MR. HASTINGS:

8 Q. Dr. Morton, did you review any  
9 customer complaints from Lucid customers  
10 related to its vehicles?

11 A. No, I did not.

12 Q. And have you reviewed any  
13 surveys or other data about consumer  
14 satisfaction with Lucid vehicles?

15 A. I don't recall off the top of  
16 my head. In the report I discuss a  
17 vehicle, and there may be something there.

18 I don't see anything, so I  
19 think I did not review such a report.

20 Q. All right. Getting back to  
21 double-marginalization, could you explain  
22 for us what double-marginalization is?

23 A. Yes. It's the increased price  
24 that occurs when a firm with market power  
25 sells an input to another firm with market

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 power that then sets a price to end  
3 consumers.

4 Q. And so with  
5 double-marginalization, both of those  
6 entities with the market power would be  
7 increasing price to generate a profit?

8 A. They would be setting markups  
9 over their own costs to generate a profit.

10 Q. And in your rebuttal report,  
11 and this is paragraph 21, you write that  
12 "Mr. Stockton points out that the  
13 illustration of double-marginalization in  
14 my initial report shows the OEM and the  
15 independent dealer with the same marginal  
16 cost of retail sales," and then you  
17 continue, you say "I agree with  
18 Mr. Stockton that if one assumes instead  
19 that the independent dealer's cost of  
20 retail sales is less than that of the OEM,  
21 the outcome becomes ambiguous."

22 What do you mean by that?

23 A. I mean that if the independent  
24 dealer's cost of retail sales is lower than  
25 the OEM's cost of retail sales, then you

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.  
2 can't immediately sign what the final price  
3 comparison will be.

4 Q. And does that mean that there  
5 is a possibility, obviously not a  
6 certainty, but a possibility if the cost of  
7 retail sales is less for the independent  
8 reseller, that there's a possibility that  
9 having the independent reseller involved  
10 could actually lower the price to the  
11 consumer?

12 A. That's a hypothetical that I  
13 don't believe is supported by the evidence.  
14 Theoretically what you said is true, but  
15 it's not very relevant for this case  
16 because that's not what the evidence  
17 demonstrates in general.

18 Q. Okay. And what evidence are  
19 you referring to regarding Lucid's sales of  
20 vehicles?

21 A. So Mr. Stockton talks about  
22 evidence from 100 years ago, but I cite in  
23 the report a Ford number, Ford's per  
24 vehicle distribution costs are \$2,000  
25 higher than those of manufacturers with

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 A. It's not clear to me why the  
3 existing franchise dealer should get the  
4 profits that used to be going to a  
5 different franchise dealer engaged in  
6 entirely different activities. I'm  
7 confused why that's a good idea.

8 Q. Have you ever testified or  
9 offered expert opinions on behalf of an  
10 automobile dealership?

11 A. No, I have not.

12 Q. Have you ever testified or  
13 offered opinions on behalf of a consumer of  
14 automobiles against a manufacturer?

15 A. No, I have not.

16 Q. In paragraph 24 of your  
17 rebuttal report you write "Dr. House simply  
18 mischaracterizes my double-marginalization  
19 analysis. He states 'Professor Morton  
20 claims that the independent dealership  
21 model results in higher new vehicle  
22 prices...' My analysis identifies a  
23 potential harm, not a certainty."

24 Do you see that?

25 A. I do.

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 Q. Isn't it true, though, if you  
3 take your statements here, that you agree  
4 that the double-marginalization does not --  
5 it's not a certainty that  
6 double-marginalization will result in  
7 higher new vehicle prices, that is what you  
8 are saying here, isn't it?

9 A. Higher compared to what? I'm  
10 sorry, I don't understand the question.

11 Q. Okay. Let me try that again.  
12 I mean, I'm just reading  
13 through your statements. Your conclusion  
14 here in paragraph 24 is agreeing that  
15 double-marginalization is not certain to  
16 result in higher prices of new automobiles.  
17 Do you agree with that?

18 A. Let me fix your question. If  
19 we took -- if we took Lucid's  
20 vertically-integrated model and the  
21 existing franchise model, one has  
22 double-marginalization, the franchise  
23 model, the other doesn't, is it for sure  
24 known that the franchise model sets a  
25 higher price than the vertically-integrated

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 model? No. It's probably -- it is very  
3 likely from the evidence that we have, but  
4 it's not a certainty, it is just probable.

5 MR. HASTINGS: I will pass the  
6 witness.

7 MR. STONE: I'm going to pass  
8 the witness as well. I have no  
9 questions. I will reserve them until  
10 trial.

11 MR. LEVINE: I just have one or  
12 two follow-ups quickly.

13 EXAMINATION BY MR. LEVINE:

14 Q. In paragraph 19 of your expert  
15 report, which is Exhibit 3, it's on page 7.

16 A. Yup, got it.

17 Q. You talk about that -- you say  
18 "Lucid's service and parts revenue will be  
19 quite limited due to relatively small scale  
20 of sales."

21 Can you explain how that small  
22 scale of sales impacts the revenue that  
23 would be available to a hypothetical  
24 independent dealer?

25 A. Yes. The hypothetical

Fiona Scott Morton - January 23, 2024

1 MORTON, Ph.D.

2 THE VIDEOGRAPHER: This  
3 concludes today's testimony given by  
4 Fiona Scott Morton, Ph.D., as  
5 stipulated by all parties. The total  
6 number of media units used was four and  
7 will be retained by Veritext Legal  
8 Solutions. Off the record at 14:37.

9  
10 [TIME NOTED: 2:37 p.m.]  
11

12 \_\_\_\_\_  
13 FIONA SCOTT MORTON, Ph.D.

14 \_\_\_\_\_  
15 Subscribed and sworn to  
16 before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2024.

17 \_\_\_\_\_  
18 Notary Public  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for  
and within the State of New York, do hereby  
certify:

That the witness whose testimony as  
herein set forth, was duly sworn by me; and  
that the within transcript is a true record  
of the testimony given by said witness.

I further certify that I am not related  
to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 23rd day of January, 2024.

A handwritten signature in black ink that reads "Todd Desimone". The signature is written in a cursive, slightly slanted style.

TODD DESIMONE

\* \* \*